

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 11 and 24 are requested to be cancelled.

Claims 25 and 26 are currently being amended.

New claims 29 and 30 are submitted.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-10, 12-23 and 25-30 are now pending in this application.

The present claims concern container latches that include a deflectable latch pin that absorbs relative movement between two sections of a container, and containers incorporating such latches.

Applicant appreciate the Examiner's indication that claims 3 and 10 would be allowable if rewritten in independent form incorporating all the preceding limitations. However, Applicant respectfully submits that additional claims are allowable in accordance with the remarks below.

Claims 25 and 26 have been amended to incorporate the limitation of claim 24 in each of those claims.

**Rejections under 35 U.S.C. § 102**

The Examiner rejected claims 1, 4, 5, 24 and 25 under 35 U.S.C. § 102(b) as allegedly anticipated by Jacobs (U.S. Patent 4,111,476). The Examiner asserted that #42 is a deflectable pin. Applicant respectfully traverses these rejections.

Applicant submits that element #42 of Jacobs cannot be a deflectable member as specified in claim 1 and the latch described in Jacobs will not absorb relative movement between first and second sections of the container. Jacobs element #42 is more clearly shown in Figures 2 and 5; identified at col. 3, line 48 as the transverse bar of locking loop 38. Inspection of the Jacobs drawings shows that the Jacobs latch system is a conventional essentially rigid latch, that does not incorporate a deflectable pin or accommodate relative movement as required by the present claims. Instead, transverse bar #42 is simply swung into position to be hooked by a latching arm and clamped, but is then held essentially rigidly without the ability to deflect to absorb relative movement.

In this regard, the relative movement referenced in the present claims refers to compression and expansion at the latch with the latch in a closed position. This is clear from the specification and from the drawings. For example, as illustrated in Fig. 11, the deflection in the latch pin is toward or away from the latch piece with the latch closed.

Therefore, because Jacobs does not describe a deflectable latch pin, the reference cannot anticipate any of claim 1 or dependent claims 4 or 5; and because Jacobs does not describe a container latch that allows relative movement within the meaning of claim 24 (i.e., compression and expansion), the reference cannot anticipate claim 24 or dependent claim 25.

The Examiner also rejected claims 6-8, 12, 24, and 25 as allegedly being anticipated by Sebok. Even though the Examiner asserted that Sebok anticipates these claims, no basis for asserting such anticipation was given. Thus, it is difficult for Applicant to respond, because the basis for the asserted anticipation is unclear.

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Despite the absence of any description or explanation of the basis for the asserted anticipation, in order to facilitate prosecution, Applicant points out reasons why Sebok cannot anticipate the present claims. In particular, the present claims require that a latch pin mounted in a container section has a latch pivotally coupled to the latch pin, so that the deflectable member is positioned between the latch pin and the latch. Sebok does not describe a latch system of this type.

In contrast to the claimed latch system of claim 6 (and as specified in claim 26), Sebok describes a clamp that includes a coil spring (see Fig. 3). In this construction, the only pin is the pin mounting the handle link 14 to the fixed link 13, which is mounted on the body of the air cleaner housing. There simply is no deflectable member between anything that can be construed as a latch pin and the latch. Because Sebok does not describe any latch configuration as in present claims 6 and 26, the reference cannot anticipate the present invention.

### **Rejections under 35 U.S.C. § 103**

The Examiner rejected claim 2 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jacobs, asserting that to have located the pin member on the bottom section and the latch member on the top section would have been an obvious matter of design choice. Applicant respectfully traverses this rejection.

Claim 2 is dependent on claim 1. As explained above, Jacobs cannot anticipate claim 1. Further, Jacobs does not suggest the present claimed latch configuration of claim 1, because the reference does not provide any suggestion or motivation to provide a latch with a deflectable latch pin. Therefore, because claim 2 includes all the limitations of claim 1, Jacobs cannot make claim 2 obvious.

The Examiner also rejected claims 9 and 11 as allegedly being unpatentable under 35 U.S.C. § 103(a) over Sebok, asserting that it would have been obvious to have employed a rubber

bushing at the pivot pin mount in the device of Sebok, motivated by the ease of operation achieved by such construction. Applicant respectfully traverses these rejections.

As explained above, Sebok cannot anticipate independent claim 6 from which claims 9 and 11 depend. In addition, Sebok does not suggest the latch configuration of claim 6, where a deflectable member is located between a latch pin mounted to a container section and a latch that is pivotally coupled to the latch pin, e.g., a deflectable bushing. Contrasted with this construction, The latch described in Sebok utilizes a conventional hinge-type construction as described above, with no deflectable member between anything that could be construed as a latch pin and the latch.

The Examiner asserted that there would have been motivation to have employed a rubber bushing in the Sebok structure because of the ease of operation achieved by this construction. Unfortunately, the Examiner has not provided any evidence or explanation supporting this conclusory statement. The Examiner has not provided either evidence or explanation either how such a rubber bushing would contribute to ease of operation or why one of ordinary skill in the art would have been motivated to modify the Sebok latch system in that way. The Federal Circuit has consistently held that such evidence and explanation is required, mere conclusory statements are not sufficient. Thus, Applicant submits that the Examiner has not properly made out a prima facie case of obviousness. Nonetheless, in order to expedite prosecution, Applicant has explained why Sebok cannot suggest the present claims. (If the Examiner is minded to maintain the obviousness rejections, Applicant respectfully requests that the Examiner provide the required evidence and explanation.)

Contrary to the Examiner's assertion of the existence of motivation to modify the latch described in Sebok, Applicant respectfully submits that because there is simply no such suggestion or motivation to modify the latch of Sebok by providing a rubber bushing. First, Applicant does not see any reason why one of ordinary skill in the art would believe that there would be increased ease of operation with a rubber bushing as asserted by the Examiner. The Sebok latch design allows the latch components to fall back out of the way for convenient

removal and replacement of the air filter cover. If a rubber bushing were provided with a tight fit, the latch would not readily clear the cover as the latch would tend to stay in the "hooked" position. Alternatively, if the rubber bushing were a loose fit, the life of the latch would be damaged because of greater exposure of the inner surface of the rubber bushing to engine fumes, solvents, and dirt. In addition, providing such a bushing would unnecessarily complicate the latch design where nothing suggests that the Sebok design is deficient for its purpose. Thus, Applicant respectfully submits that Sebok does not suggest the present invention, and thus cannot make it obvious.

In view of the discussion above, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections for alleged obviousness of the claimed invention.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

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## de·flect

**de·flect** (dĕflĕkt) *verb, intransitive & transitive*

**de·flect·ed, de·flect·ing, de·flects**

To turn aside or cause to turn aside; bend or deviate.

[Latin *d* *flectere* : *d* -, *de*- + *flectere*, to bend.]

— **de·flect a·ble** *adjective*

— **de·flec tive** *adjective*

— **de·flec tor** *noun*

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